

3.3. Biological Resources

This section addresses potential biological resources impacts that may result from construction and/or operation of the Belmont Village Encinitas-by-the-Sea Project. The following discussion addresses the existing conditions in the Project area, identifies applicable regulations, identifies and analyzes environmental impacts, and recommends measures to reduce or avoid adverse impacts anticipated from implementation of the Project, as applicable.

The analysis in this section is based on the Biological Assessment Letter Report prepared by BLUE Consulting Group (2019), which includes a Jurisdictional Waters/Wetland Delineation Report prepared by RECON (2019) (Appendix D-1). The results of the Focused Protocol Coastal California Gnatcatcher Survey Report prepared by BLUE Consulting Group (2019) are also presented in this section (Appendix D-2). These documents were peer reviewed by BRG Consulting, Inc.

Scoping Issues Addressed

During the scoping period for the Project, a scoping meeting was conducted, and written comments were received from agencies and the public. The following issues related to biological resource impacts were raised by the California Department of Fish and Wildlife (CDFW) and the general public and are addressed in this section:

- DEIR should include a jurisdictional delineation.
- DEIR should identify potential impacts to stream or riparian resources and provide adequate avoidance, mitigation, monitoring, and reporting commitments for issuance of a Lake and Streambed Alteration Agreement (LSSA).
- DEIR should include an analysis of potential impacts to the Focused Planning Area (FPA) and project consistency with the applicable sections of the draft Subarea Plan (SAP).
- DEIR should include a figure depicting location of fuel management zones.
- Any agricultural land proposed for conversion should be evaluated for potential benefits to the preserve and analyzed for meeting softline conservation standards prior to development approval as specified in Section 4.3.1.10 of the draft SAP.
- DEIR should include the following regarding the pedestrian trail:
 - measures to avoid/minimize impacts related to hikers straying off-trail and/or trail use by unauthorized vehicles; and
 - a discussion of how the proposed location and use of the trail would be consistent with the City's draft SAP.
- DEIR should address cumulative effects to sensitive species and habitats

- Protocol-level surveys should be conducted for listed species with potential to occur within project site and results included in the DEIR.
- DEIR should include an assessment of special status plants and natural communities; an inventory of biological resources within each habitat type; and, an inventory of rare, threatened, endangered and other sensitive species.
- DEIR should include a discussion of potential adverse impacts from lighting, noise, human activity, exotic species, and drainage to on-site or adjacent habitats; impacts on wildlife corridors/movement areas, including access to undisturbed habitats.
- DEIR should include measures to fully avoid and otherwise protect Rare Natural Communities (i.e. threatened habitats having both regional and local significance from project-related impacts).
- DEIR should include mitigation measures that alleviate direct and indirect impacts. For unavoidable impacts, on-site habitat restoration or enhancement and/or off-site mitigation through habitat creation and/or acquisition should be discussed.
- DEIR should include a requirement for temporary fencing where proposed grading or clearing is within 100 feet of preserved sensitive habitats.
- DEIR should include the requirement that a Wildlife Agency-approved biological monitor be present during initial clearing, grading, and construction in sensitive habitat areas.
- DEIR should include plans for restoration and revegetation.
- DEIR should include measures to protect, in perpetuity, the habitat values of proposed preservation and/or restoration areas from direct and indirect negative impacts.
- DEIR should include a management and monitoring plan (MMP), including a funding commitment, for any on- and/or off-site biological open space easements, if applicable.
- Measures should be taken to avoid impacts to nesting birds.

CDFW also requested that the Draft EIR evaluate the Project's consistency with the City of Encinitas' Draft Subarea Plan for the North County Multiple Habitat Conservation Program.

3.3.1. Existing Conditions

The Project site is situated adjacent to the northern boundary of the San Elijo Lagoon. To the south of the Project site is the San Elijo Lagoon Open Space, to the west is developed land and I-5, to the east is Mira Costa College and to the north are coastal bluffs, atop which supports high density housing. The Project site has been impacted by nursery operations and intense cultivation for several decades. The southwest corner of the property has been acquired by Caltrans via eminent domain and is being utilized for Caltrans' San Elijo Park and Ride/Multi-Use Facility. This area was included in the biological surveys, but is not considered a part of the Project site.

Biological Surveys

The Biological Assessment documents surveys conducted on the site between October 21, 2017 and June 6, 2019. Prior to conducting the biological surveys, a thorough review of relevant maps, databases, and literature pertaining to biological resources was performed. Recent aerial imagery, topographic maps, soils maps, and other maps of the Project site and immediate vicinity were acquired and reviewed to obtain updated information on the natural environmental setting. In addition, a query of sensitive species and habitat databases was conducted, including the California Natural Diversity Database, the California Native Plant Society Electronic Inventory, and the Consortium of California Herbarium applications, as well as a review of regional species lists produced by the U.S. Fish and Wildlife Service (USFWS) and California Department of Fish and Wildlife (CDFW).

A general habitat, sensitive and rare species biological survey, along with a protocol wetland delineation were conducted for the Project site and the area approximately 100 feet beyond the property lines on October 21, 2017. USFWS protocol surveys for the Coastal California Gnatcatchers were conducted on May 17, May 27 and June 9, 2017. A wetland delineation was also conducted in August 2019 for the off-site areas, south of Manchester Avenue, in the vicinity of proposed improvements to four existing drainage culverts.

Jurisdictional Delineations

A preliminary U.S. Army Corps of Engineers (ACOE) jurisdictional wetland delineation of the Project site was also conducted in on October 21, 2017 to identify potential features to determine whether they met the criteria of a potentially jurisdictional feature. An additional jurisdictional wetland delineation was conducted on August 21, 2019. The survey area for this delineation included four (4) off-site existing culvert locations south of Manchester Avenue that are proposed for improvement as part of this Project, and a 100-foot buffer around each.

Delineation of Non-Wetland Waters of the U.S.

Methods for the delineation of Non-Wetland Waters of the U.S were based on indicators for Ordinary High Water Mark (OHWM), following established criteria outlined in the *U.S. Army Corps of Engineers Wetlands Delineation Manual* (Environmental Laboratory 1987), *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region* (USACE 2008a), and *A Field Guide to the Identification of the OHWM in the Arid West Region of the Western United States* (USACE 2008b).

All jurisdictional features within the study area were determined by the presence of OHWM indicators.

Delineation of SWRCB)/ RWQCB) Jurisdictional Resources

Evaluation of State Water Resource Control Board (SWRCB)/Regional Water Quality Control Board (RWQCB) jurisdiction followed guidance from Section 401 of the Clean Water Act (CWA) and follows the same jurisdictional areas as ACOE, unless an isolated water is determined to be present. Isolated water features are not considered jurisdictional under ACOE, but are still delineated using the OHWM or wetted area. Isolated water bodies are considered SWRCB/RWQCB jurisdictional under the Porter-Cologne Act.

Delineation of CDFW Jurisdictional Resources

Evaluation of CDFW jurisdiction followed the guidance of standard practices by CDFW personnel. CDFW jurisdiction was delineated by measuring the width of top of bank of watercourses, which equaled the bed and bank limits in these small systems, all of which are deeply incised under the currently existing condition. Riparian vegetation was observed within the study area, to the south of Manchester Avenue.

Vegetation Communities

A total of six vegetation communities or habitat types occur within the Project site including freshwater marsh, unvegetated ephemeral Waters of the U.S. (channel), coastal sage scrub, agricultural, urban disturbed (previously graded), and developed (Figure 3.3-1a, On-Site Existing Vegetation and Habitats). Off-site vegetation and habitats mapped within the study area south of Manchester Avenue are depicted on Figure 3.3-1b and include south coastal salt marsh, coastal brackish marsh, herbaceous wetland, southern willow scrub, mule fat scrub, coastal scrub, intertidal estuary, Diegan coastal sage scrub, disturbed habitat, and urban/developed land. Table 3.3-1 summarizes the vegetation communities and habitats mapped within the survey areas. A brief description of each vegetation community is provided below.

TABLE 3.3-1. VEGETATION COMMUNITIES/HABITATS WITHIN THE SURVEY AREAS

Habitat Type	Acreage
<i>On-Site</i>	
CDFW Fresh/Saltwater Marsh	0.13
ACOE/CDFW/RWQCB Non-wetland water of the US, Unvegetated ephemeral	0.08
Coastal Sage Scrub	1.81
Agricultural/Greenhouse (graded/maintained)	15.74
Disturbed Habitat (urban)	0.68
Developed (paved/developed area)	0.59
On-Site Subtotal	19.03

**TABLE 3.3-1. VEGETATION COMMUNITIES/HABITATS WITHIN THE
SURVEY AREAS**

Habitat Type	Acreage
<i>Off-Site</i>	
South Coastal Salt Marsh	0.806
Coastal Brackish Marsh	0.042
Herbaceous Wetland	0.017
Southern Willow Scrub	0.072
Mule Fat Scrub	0.109
Coastal Scrub	0.228
Intertidal Estuary	0.021
Diegan Coastal Sage Scrub	0.032
Disturbed Habitat	0.365
Urban/Developed Land	1.038
Off-Site Subtotal	2.730

Notes:

ACOE = U.S. Army Corps of Engineers

CDFW = California Dept. of Fish and Wildlife

RWQCB = Regional Water Quality Control Board

Source: BLUE Consulting Group, 2019 (Appendix D-1).

On-Site*Fresh/Saltwater Marsh (CDFW Jurisdictional)*

The observed Freshwater Marsh, a jurisdictional wetland totaling 0.13 acres, occurs within the northwestern-most portion of the Property, on the south side of Manchester Avenue. This habitat is within the San Elijo Lagoon. Typically, and in this location, this jurisdictional vegetation community is comprised of typical perennial emergent monocots including salty dodder (*Cuscuta salina*), alkali heath (*Frankenia grandifolia*), saltgrass (*Distichlis spicata*), pickleweed (*Salicornia virginica*) and southwestern spiny rush (*Juncus acutus*).

Non-Wetland Water of the U.S.; Unvegetated Ephemeral Channel (Federal/State Jurisdictional Habitat)

The unvegetated non-wetland Waters of the U.S. ephemeral channel is located on-site in the form of a managed and maintained soft bottom channel, totaling 0.08 acres, which follows the general historical course of this natural drainage feature. The channel enters the Project site from the west, adjacent to the toe of the bluff and Caltrans park and ride/multi-use facility, and exits the Project site at the southern property line draining into a roadside ditch which then enters the San Elijo

Lagoon. Waddles¹ are located within the channel, and due to regular maintenance, no vegetation was observed within the channel, which is on average 3 feet wide.

The on-site portion of the developed drainage ditch/flood control infrastructure associated with the development of Manchester Avenue, located on the northern side of the street, is not a natural drainage channel and is not located in the historic location of a natural channel. Therefore, this developed and maintained flood control brow ditch/street infrastructure is not considered jurisdictional.

Diegan Coastal Sage Scrub

The 1.81 acres of Diegan coastal sage scrub on-site is of high quality, with little to no areas supporting concentrated non-native species. This habitat is located on the northern portion of the Project site and adjacent to the coastal bluff located to the north of the site.

Agricultural

On-site, the 15.74 acres of agricultural use is the dominant feature and is comprised of fields, roads and irrigation infrastructure.

Urban Disturbed Habitat

On-site, the 0.68 acres of urban/disturbed land is generally located on the perimeter of the Project site and has been historically graded (slopes and pads) and are maintained. Disturbed land typically provides little habitat for wildlife species.

Developed

On-site, the 0.59 acres of developed land is limited to the development of the roads and business structures. This is inclusive of the south west corner of the Property that Caltrans assumed by eminent domain, portions of Manchester Avenue and the drainage brow ditch located on the north side of the road.

Off-Site

The following six vegetation communities contain hydrophytic vegetation: south coastal salt marsh, coastal brackish marsh, herbaceous wetland, southern willow scrub, mule fat scrub, and coastal scrub, were mapped (See Figure 3.3-1b).

South Coastal Salt Marsh

South coastal salt marsh occurs within the majority of the survey areas southeast of Manchester Avenue. It generally occurs within the low flat portions of the lagoon and extends as a large expanse

¹ Typically used for sediment control.

throughout the lagoon outside the survey areas. The south coastal salt marsh areas are dominated by alkali heath (*Frankenia salina*;) and salty susan (*Jaumea carnosa*), which tend to separately dominate different portions of this vegetation community. Other commonly occurring species include salt grass (*Distichlis spicata*), glasswort (*Arthrocnemum subterminale*), coastal goldenbush (*Isocoma menziesii*), and large-flower salt marsh dodder (*Cuscuta pacifica* var. *pacifica*).

Coastal Brackish Marsh

Coastal brackish marsh occurs as a small patch near Manchester Avenue. This habitat consists of a dense stand of common tule (*Schoenoplectus acutus* var. *occidentalis*) with occasional great marsh evening-primrose (*Oenothera elata*) and coastal goldenbush.

Herbaceous Wetland

Herbaceous wetland occurs as a small patch around the outfall of the existing culvert in the Northeastern Survey Area. This patch is dominated by great marsh evening-primrose, which has a vegetation cover of approximately 50 percent.

Southern Willow Scrub

Southern willow scrub occurs as two small patches both of which are dominated by mature arroyo willow (*Salix lasiolepis*).

Mule Fat Scrub

Mule fat scrub occurs as three patches within the survey area, generally occurring adjacent to the outfalls of the existing culverts. All three patches are dominated by mule fat with two (2) patches containing substantial vegetation cover of arroyo willow.

Coastal Scrub

Coastal scrub occurs as patches interspersed, generally between the existing culvert outfalls and on slightly sloped areas between the disturbed habitat along Manchester Avenue and the expanses of southern coastal salt marsh. These coastal scrub areas are dominated by coastal goldenbush and contain a variety of herbaceous species in the understory, including alkali heath and western ragweed.

Vegetation communities or land cover types within the off-site survey area that lack hydrophytic vegetation include areas mapped as intertidal estuary, Diegan coastal sage scrub, disturbed habitat, and urban/developed land. The small patch of Diegan coastal sage scrub is dominated by California buckwheat (*Eriogonum fasciculatum*). Intertidal estuary was mapped within the unvegetated portions of the San Elijo Lagoon, which occurs in the eastern and southeastern portions of the survey area.

Disturbed habitat was mapped mostly along the edge of the road and the top of the slope leading down from Manchester Road. These areas were dominated by a combination of native and non-native herbaceous species, such as horseweed, short-pod mustard (*Hirschfeldia incana*), telegraph weed (*Heterotheca grandiflora*), great marsh evening-primrose; freeway iceplant (*Carpobrotus edulis*) and western ragweed. The areas mapped as urban/developed areas include the paved roadway of Manchester Avenue.

Sensitive Habitats

Sensitive habitats are those which generally support sensitive plant or wildlife species and have limited distribution, restricted habitat requirements, particular susceptibility to human disturbance, degradation due to development or invasion by non- native species, or a combination of all of these factors. Three sensitive habitat types were observed on-site: coastal sage scrub, CWA Section 404 jurisdictional freshwater marsh and CWA jurisdictional unvegetated non-wetland waters (ephemeral channel running through the existing agricultural fields). Note that CWA jurisdictional areas are also protected as Waters of the State of California under the Porter Cologne Water Quality Act. Offsite to the south is the San Elijo Lagoon.

Sensitive Plant Species

Sensitive or special status plant species are those which are considered rare, threatened, or endangered within the state or region by local, state, or federal resource conservation agencies. Sensitive plant species are so called because of their limited distribution, restricted habitat requirements, or particular susceptibility to human disturbance, or a combination of these factors.

No sensitive plant species were observed on-site during the 2017 biological survey, and due to the condition of the site, none would be expected to occur on-site or within the off-site development envelope. Due to lack of appropriate habitat, the potential for sensitive plant species to occur on-site ranges from none to moderate, but none has greater than a moderate potential to occur on-site

Sensitive Animal Species

Sensitive or special status wildlife species are those which are considered rare, threatened, or endangered within the state or region by local, state, or federal resource conservation agencies. Sensitive species are so called because of their limited distribution, restricted habitat requirements, or particular susceptibility to human disturbance, or a combination of these factors.

A total of eight (8) wildlife species were identified on-site. Of these eight (8) only one is considered a sensitive wildlife species. A single sensitive wildlife species was observed flying overhead, a turkey vulture (*Cathartes aura*). USFWS protocol coastal California gnatcatcher surveys have been completed and were negative for on-site coastal California gnatcatcher (Appendix D-2). A portion

of the Project site supports coastal sage scrub habitat which is appropriate for the coastal California gnatcatcher; however, no gnatcatchers were observed on-site during the completed surveys.

Nesting Birds and Raptors

The Property contains numerous scattered mature trees as well as mature ornamental landscaping. These features are located within the southwest corner, which is being utilized for Caltrans' San Elijo Park and Ride/Multi-Use Facility and is not considered a part of the Project site. There are no appropriate nesting areas for raptors within the Project site.

Mature trees can support raptor nesting. Raptors are large predatory or scavenger birds that typically require tall trees for perching and nesting associated with adjacent open grasslands to forage. Due to declining habitat and the associated declining numbers of these species on the whole, many raptor species have been designated as California Species of Special Concern by the CDFW. These species are protected, especially during their critical nesting and wintering stages. Raptors are protected under the CDFW California Raptor Protection Act (Title 14, Section 670). No historic raptor nests were observed within the trees adjacent to the Project site.

Wildlife Corridors

Corridors are smaller constrained areas of habitat that connect larger areas of habitat which are otherwise separated by rugged terrain, changes in vegetation, or urban development. A corridor is a specific route that is used for the movement and migration of species. In San Diego County, important corridors have been identified on the local and regional scale in establishing a connection between the northern and southern regions.

The Project site is itself generally developed and actively utilized with the surrounding area to the north and east dominated by high density development. While the San Elijo Lagoon and Open Space is immediately adjacent to the southern property line, the Project site is not within an existing recognized habitat corridor.

3.3.2. Regulatory Framework

Federal

Endangered Species Act

The federal Endangered Species Act (ESA) establishes the legal framework for the listing and protection of species (and their habitats) identified as being endangered or threatened with extinction. Actions that jeopardize endangered or threatened species and the habitats upon which they rely are considered a "take" under the ESA. Take of a federally listed threatened or endangered species is prohibited without a special permit. The ESA allows for take of a threatened or endangered species incidental to development activities once a Habitat Conservation Plan has been prepared to

the satisfaction of the USFWS and an Incidental Take Permit has been issued under Section 10 of the Act. The ESA allows for the take of threatened or endangered species after consultation has deemed that development activities will not jeopardize the continued existence of the species. The ESA also provides for a Section 7 consultation when a federal permit is required, such as a Clean Water Act Section 404 Permit.

“Critical habitat” is a term within the ESA designed to guide actions by federal agencies (as opposed to state, local, or other agency actions) and defined as an area occupied by a species listed as threatened or endangered within which are found physical or geographical features essential to the conservation of the species, or an area not currently occupied by the species which is itself essential to the conservation of the species.

Clean Water Act

Under Section 401 of the Clean Water Act (CWA), a federal agency may not issue a permit or license to conduct any activity that may result in any discharge into Waters of the United States unless a state or authorized tribe where the discharge would originate issues a Section 401 Water Quality Certification verifying compliance with existing water quality requirements or waives the certification requirement.

CWA Section 404 prohibits the discharge of dredged or fill material into Waters of the United States without a permit from the ACOE. The ACOE and the US Environmental Protection Agency (EPA) administer the act. In addition to streams with a defined bed and bank, the definition of Waters of the United States includes wetland areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions (33 CFR 328.3 7b). The lateral extent of non-tidal waters is determined by delineating the ordinary high-water mark (33 CFR Section 328.4[c][1]).

If adjacent wetlands occur, the limits of jurisdiction extend beyond the ordinary high-water mark to the outer edge of the wetlands. The presence and extent of wetland areas are normally determined by examination of a site’s vegetation, soils, and hydrology. The majority of jurisdictional wetlands exhibit three wetland criteria: hydrophytic vegetation, wetland hydrology, and hydric soils.

Impacts such as the placement of fill in Waters of the United States may require an individual permit. Small-scale projects may qualify for permitting under the nationwide permit program, which typically has an expedited process compared to the individual permit process. Compensatory mitigation for impacts to Waters of the United States is required as a condition of the Section 404 Permit and Section 401 Water Quality Certification. Typically, 1:1 establishment or re-establishment of the habitat impacted is the minimum compensatory mitigation required. Additional mitigation may include preservation, restoration, and/or enhancement, either on- or off-site. The

characteristics of the restored or enhanced Waters of the United States must be equal to or better than those of the affected resource to achieve no net loss of function and values.

Migratory Bird Treaty Act

The Migratory Bird Treaty Act (MBTA) implements international treaties between the United States and other nations devised to protect migratory birds, their parts, eggs, and nests from activities such as hunting, pursuing, capturing, killing, selling, and shipping, unless expressly authorized in the regulations or by permit. The State of California has incorporated the protection of birds of prey in Sections 3800, 3513, and 3503.5 of the California Fish and Game Code (FGC).

All raptors and their nests are protected from take or disturbance under the MBTA (16 USC Section 703 et seq.) and California statute (FGC Section 3503.5).

State

California Endangered Species Act

The California Endangered Species Act (CESA) generally parallels the main provisions of the FESA and is administered by the CDFW. State lead agencies are required to consult with CDFW to ensure any action it undertakes is not likely to jeopardize the continued existence of any state-listed endangered, threatened, or candidate plant and animal species. The take of a state endangered species is approved in a manner similar to that of the federal act, with a take permit being granted through Section 2081 of the CESA. In addition to listed species, the CDFW also maintains a list of “species of special concern,” including species whose breeding populations in California may face local extirpation. To avoid future listing of these species of special concern as endangered or threatened, the CDFW recommends consideration of these species (although they do not as yet carry legal status) during analysis of the impacts of proposed projects.

There are no state agency consultation procedures under the CESA. For projects that affect both a state and federal listed species, compliance with the federal Endangered Species Act will satisfy the CESA act if the California Department of Fish and Wildlife (CDFW) determines that the federal incidental take authorization is “consistent” with the CESA under FGC Section 2080.1. For projects that will result in a take of a state-only listed species, the Project proponent must apply for a take permit under Section 2081(b).

California Fish and Game Code

The California Fish and Game Code codifies regulations for the management and protection of the state’s fish, wildlife, plant and native habitats.

Native Plant Protection Act

The Native Plant Protection Act (FGC Sections 1900–1913) prohibits the take, possession, or sale within the state of any plants with a state designation of rare, threatened, or endangered (as defined by the CDFW). An exception in the act allows landowners, under specified circumstances, to take listed plant species, provided that the owners first notify the CDFW and give that state agency at least 10 days to retrieve the plants before they are plowed under or otherwise destroyed (FGC Section 1913). Project impacts to these species are not considered significant unless the species are known to have a high potential to occur in the area of disturbance associated with construction of a proposed project.

Sensitive Vegetation Communities

Sensitive vegetation communities are natural communities and habitats that are unique, of relatively limited distribution in the region, or of particularly high wildlife value. These resources have been defined by various federal, state, and local conservation plans, policies, or regulations. The CDFW ranks sensitive communities as threatened or very threatened and keeps records of their occurrences in the California Natural Diversity Database (CNDDDB). The CDFW also identifies sensitive vegetation communities on its List of California Natural Communities Recognized by the CNDDDB. Impacts to sensitive natural communities and habitats identified in local or regional plans, policies, and regulations, or by federal or state agencies, must be considered and evaluated under the California Environmental Quality Act (CEQA).

Species of Special Concern

Species of special concern are broadly defined as animals not listed under the CESA, but which are nonetheless of concern to the CDFW because they are declining at a rate that could result in listing, or historically occurred in low numbers and known threats to their persistence currently exist. This designation is intended to result in special consideration for these animals by the CDFW, land managers, consulting biologists, and others, and is intended to focus attention on the species to help avert the need for listing under the CESA and recovery efforts that might ultimately be required. The designation also is intended to stimulate collection of additional information on the biology, distribution, and status of poorly known at-risk species and to focus research and management attention on them. Although these species generally have no special legal status, they are given special consideration under CEQA during project review. Species of special concern are included in the list of Special Animals List tracked by the CNDDDB.

Porter-Cologne Water Quality Control Act

The Porter-Cologne Water Quality Control Act defines Waters of the state as any surface water or groundwater, including saline waters, within the boundaries of the state. The Regional Water Quality Control Boards (RWQCBs) protect all waters in their regulatory scope but have special responsibility for isolated wetlands and headwaters. These water bodies have high resource value,

are vulnerable to filling, and may not be regulated by other programs, such as CWA Section 404. The RWQCBs regulate Waters of the State under the Water Quality Certification Program, which regulates discharges of dredged and fill material under CWA Section 401 and the Porter-Cologne Water Quality Control Act.

Projects that require an ACOE permit, or fall under other federal jurisdiction, and have the potential to impact Waters of the State are required to comply with the terms of the Water Quality Certification Program. If a proposed project does not require a federal license or permit but involves activities that may result in a discharge of harmful substances to Waters of the State, the applicable RWQCB has the option to regulate such activities under its state authority in the form of waste discharge requirements or certification of waste discharge requirements.

Lake and Streambed Alteration Program

The California Fish and Game Code Section 1602 requires any person, state, or local governmental agency to notify the CDFW prior to initiating any activity that would (1) divert or obstruct the natural flow of or substantially change or remove material from the bed, channel, or bank of any river, stream, or lake; or (2) result in the disposal or deposition of debris, waste, or other material into any river, stream, or lake. The state definition of “lakes, rivers, and streams” includes all rivers or streams that flow at least periodically or permanently through a well-defined bed or channel with banks that support fish or other aquatic life, and watercourses with surface or subsurface flows that support or have supported riparian vegetation.

Natural Community Conservation Planning Act of 1991

The Natural Community Conservation Planning Act is aimed at conservation of natural communities at the ecosystem scale while allowing for compatible land uses. The CDFW is primarily responsible for implementation of the act, which is intended to allow comprehensive protection and management of wildlife species and provides for regional protection of natural wildlife diversity while allowing appropriate land development.

Local

Multiple Habitat Conservation Program

The Multiple Habitat Conservation Program (MHCP) is a comprehensive, multiple jurisdictional planning program designed to develop an ecosystem preserve in San Diego County. Implementation of the regional preserve system is intended to protect viable populations of key sensitive plant and animal species and their habitats, while accommodating continued economic development and quality of life for residents of the North County region. The North County MHCP, adopted and certified by the SANDAG Board of Directors on March 28, 2003, extends the County’s MHCP program into the northwestern areas of the County. The North County MHCP includes six (6) incorporated cities in northwestern San Diego County: Carlsbad Encinitas, Escondido, San Marcos,

Solana Beach, and Vista. These jurisdictions will implement their respective portions of the MHCP through “subarea” plans, which describe the specific implementing mechanisms each city will institute. The goal of the MHCP is to conserve approximately 19,000 acres of habitat, of which roughly 8,800 acres (46 percent) are already in public ownership and contribute toward the habitat preserve system for the protection of more than 80 rare, threatened, or endangered species.

City of Encinitas Draft Subarea Plan

The City of Encinitas Draft Subarea Plan addresses how the City could conserve natural biotic communities and sensitive plant and wildlife species under the MHCP framework. The Draft Subarea Plan would provide regulatory certainty to landowners in the city and aid in conserving the region’s biodiversity and enhancing the quality of life. The Draft Subarea Plan addresses the potential impacts to natural habitats and rare, threatened, or endangered species caused by projects in the City. The Draft Subarea Plan also forms the basis for Implementing Agreements, which would be the legally binding agreements between the City and the wildlife agencies that ensure implementation of the plan and provide the City with state and federal “take authority.”

The Project site is located within the southern area of the Subarea Plan and is within a “softline” focused planning area (FPA); however, the Subarea Plan has not been adopted by the City of Encinitas.

City of Encinitas General Plan

The City of Encinitas General Plan (General Plan) serves as a blueprint for the long-range physical planning of the City. The General Plan contains goals and policies designed to shape the long-term development of the City, as well as protect its environmental, social cultural, and economic resources. The relevant goals and policies for the Project include:

Resource Conservation Element

- | | |
|-------------|--|
| Policy 3.1: | Mature trees of community significance cannot be removed without City authorization. |
| Policy 3.2: | Mature trees shall not be removed or disturbed to provide public right-of-way improvements if such improvements can be deferred, redesigned, or eliminated. This policy is not meant to conflict with the establishment of riding/hiking trails and other natural resource paths for the public good, or with the preservation of views. |
| Policy 3.6: | Future development shall maintain significant mature trees to the extent possible and incorporate them into the design of development projects. |
| Policy 5.1: | The City will monitor and cooperate with the ongoing efforts of the U.S. Environmental Protection Agency, the San Diego Air Pollution Control |

- District, and the State of California Air Resources Board in improving air quality in the regional air basin. The City will implement appropriate strategies from the San Diego County SIP which are consistent with the goals and policies of this plan.
- Policy 5.2: The City will monitor and cooperate with the ongoing efforts of the U.S. Environmental Protection Agency, the State of California Water Resources Control Board, and the Regional Water Quality Control Board in improving water quality in the San Diego region.
- Policy 9.2: All drainage courses should be maintained in natural or semi- natural vegetation utilizing existing topography as opposed to concrete ditches or pipes. (Coastal Act/30231/30240)
- Policy 9.3: Where possible, bridges should be used in lieu of pipes, box culverts, or underground channels to preserve the integrity of the natural stream courses, in keeping with community character in the Planning Area. (Coastal Act/30231/30240)
- Policy 10.1: The City will minimize development impacts on coastal mixed chaparral and coastal sage scrub environmentally sensitive habitats by preserving within the inland bluff and hillside systems, all native vegetation on natural slopes of 25% grade and over other than manufactured slopes. A deviation from this policy may be permitted only upon a finding that strict application thereof would preclude any reasonable use of the property (one dwelling unit per lot). This policy shall not apply to construction of roads of the City' s circulation element, except to the extent that adverse impacts on habitat should be minimized to the degree feasible. Encroachments for any purpose, including fire break brush clearance around structures, shall be limited as specified in Public Safety Policy 1.2. Brush clearance, when allowed in an area of sensitive habitat or vegetation, shall be conducted by selective hand clearance. (Coastal Act/30240/30250/30251/30253)
- Policy 10.5: The City will control development design on Coastal Mixed Chaparral and Coastal Sage Scrub environmentally sensitive habitats by including all parcels containing concentrations of these habitats within the Special Study Overlay designation. The following guidelines will be used to evaluate projects for approval.
- conservation of as much existing contiguous area of Coastal Mixed Chaparral or Coastal Sage Scrub as feasible while protecting the remaining areas from highly impacting uses;

- minimize fragmentation or separation of existing contiguous natural areas;
- connection of existing natural areas with each other or other open space areas adjacent to maintain local wildlife movement corridors;
- maintenance of the broadest possible configuration of natural habitat area to aid dispersal of organisms within the habitat;
- where appropriate, based on community character and design,
- clustering of residential or other uses near the edges of the natural areas rather than dispersing such uses within the natural areas;
- where significant, yet isolated habitat areas exist, development shall be designed to preserve and protect them;
- conservation of the widest variety of physical and vegetational conditions on site to maintain the highest habitat diversity;
- design of development, with adjacent uses given consideration, to maximize conformance to these guidelines; and
- preservation of rare and endangered species on site rather than by transplantation off site. (Coastal Act/ 30240/30250)

In addition, all new development shall be designed to be consistent with multi- species and multi- habitat preservation goals and requirements as established in the statewide Natural Communities Conservation Planning (NCCP) Act. Compliance with these goals and requirements shall be implemented in consultation with the United States Fish and Wildlife Service and California Department of Fish and Game. Policy 10.5 amended 5/11/95 (Resolution 95-32)

Policy 10.9:

The City will encourage the preservation and the function of San Elijo Lagoon and Batiquitos Lagoon and their adjacent uplands as viable wetlands, ecosystems and habitat for resident and migratory wildlife, by prohibiting actions (subject to the detailed provisions of RM policy 10.6) which:

- involve wetland fill or increased sedimentation into wetlands;
- adversely decrease stream flow into the wetlands;
- reduce tidal interchange;

- reduce internal water circulation; or
- adversely affect existing wildlife habitats. (Coastal Act/30231)

Policy 10.11: In acting to maintain and, where feasible, restore the biological productivity and quality of San Elijo Lagoon, the City will limit alterations and uses to minor public facilities; restorative measures; nature study; passive, non- degrading recreational activities; and facilities necessarily adjunct aquaculture uses. No recreational boating facilities will be permitted in San Elijo Lagoon. Coastal- dependent developments (i.e., utility facilities, boating facilities, etc.) shall not be sited in the wetland area (San Elijo Lagoon and contiguous wetlands). (Coastal Act/30231)

Policy 13.5: The City shall promote and require the conservation and preservation of natural resources and features of the area in their natural state and avoid the creation of a totally urbanized landscape. Encourage the planting of trees and other vegetation, especially native species, to enhance the environment. (Coastal Act/30240/30251)

Policy 13.6: Establish and preserve wildlife corridors. (Coastal Act/30231/30240)

3.3.3. Thresholds for Determination of Significance

This section lists the thresholds used to conclude whether a biological impact would be significant.

Guidelines for Determination of Significance

A project would be considered to have a significant impact if it would:

- 1) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service.
- 2) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service?
- 3) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means.

- 4) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites.
- 5) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.
- 6) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan.

3.3.4. Analysis of Project Effects and Significance Determination

Impact 3.3-1: Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service.

No species identified as a candidate, sensitive, or special-status species were observed on-site during the 2017 biological surveys and none would be expected to occur onsite. USFWS protocol coastal California gnatcatcher surveys were completed for the Project and were negative for on-site coastal California gnatcatcher (Appendix D-2). However, the Biological Assessment Report indicated a high potential for the gnatcatcher to occupy the on-site Diegan coastal sage scrub. This sensitive on-site habitat would be protected by a proposed open space easement and would not be modified or directly impacted by the Project.

Although no special-status plant or animal species are expected to be directly impacted by the Project through habitat modification, indirect impacts on California gnatcatchers may occur during construction activities, as discussed below under Impact 3.3-2. In addition, reconstruction of the four off-site storm drain outlets would result in minor impacts on wetland habitat associated with the San Elijo Lagoon, which supports sensitive bird species in the nearby area, such as the Belding's Savannah Sparrow and Ridgway's Rail. These impacts consist of permanent impacts to 12 square feet (SF) and temporary impacts to 784 SF of jurisdictional wetlands. Overall, with implementation of wetland mitigation measures (MM BIO-3 and MM BIO-4) discussed below, the Project's minor direct impacts on sensitive habitat are not expected to result in significant effects on sensitive species. However, the edge effects associated with construction activities within and/or near sensitive wetland and upland habitat areas may result in significant indirect effects on sensitive species. These indirect effects and mitigation are addressed below under Impact 3.3-2.

Raptors have been historically observed in the area and there are large open areas on-site, raptor foraging within this area may occur. However, as this area is currently and historically utilized by human activity, no historic raptor nests have been observed on-site, the loss of this area does not constitute a significant habitat impact or loss of significant raptor foraging area. As a condition of

approval, the City will require a pre-construction survey of potential nesting habitat if initial grading and vegetation removal activities must occur with the general bird breeding season for migratory birds and raptors (January 15 and September 15), to confirm the absence of active nests belonging to migratory birds and raptors afforded protection under the MBTA and California FGC.

Overall, the Project would not have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW or USFWS. Direct impacts on such species would be less than significant.

Impact 3.3-2: Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service.

During construction of the Project, short-term indirect impacts include noise and construction-related erosion, which could temporarily affect sensitive habitat and the vitality of sensitive species that utilize the habitat. These species include the California gnatcatcher, which has a high potential of occurring within the on-site Diegan coastal sage scrub. Other sensitive species that could experience short-term indirect impacts include wetland bird species that occur off-site within the San Elijo Lagoon, where nearby observations of the Belding's Savannah Sparrow and Ridgway's Rail have been documented. Long-term indirect impacts may include intrusions by humans and domestic pets using the proposed trail, lighting, invasion by exotic plant and wildlife species, use of toxic chemicals (fertilizers, pesticides, herbicides, and other hazardous materials), soil erosion, and hydrological changes. The Project site is located in the City of Encinitas draft Subarea Plan area and within a 'softline' focused planning area (FPA). In order to prevent potential significant indirect impacts to the proposed open space, sensitive adjacent upland habitats and/or the San Elijo Lagoon, MM BIO-1 through MM BIO-6 would be implemented by the Project.

The Project would not directly impact sensitive upland habitat (Diegan coastal sage scrub) identified on- or off-site. However, as discussed below, the project would have direct impacts on the jurisdictional non-wetland drainage channel onsite and off-site wetland habitat.

Impact 3.3-3: Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means.

Implementation of the Project would result in a direct impact to the vegetation community acreages, as presented on Table 3.3-2. As shown on Table 3.3-2, the Project would permanently and temporarily impact a total of 16.69 acres. Of this total, 12.94 acres of disturbance would occur on-site, and 3.75 acres would be impacted by off-site improvements. This total is comprised of the following vegetation types: agricultural, developed, ACOE/CDFW jurisdictional non-wetland water

ephemeral drainage channel, off-site CDFW jurisdictional marsh wetlands. (See Figure 3.3-2). The only federally protected Waters of the U.S. as defined by the CWA that would be permanently impacted on-site are 0.08 acres of jurisdictional non-wetland water ephemeral drainage channel and compensatory mitigation is required. This impact would be mitigated to below a level of significance with implementation of MM BIO-2.

Reconstruction of the off-site storm drain culverts would result in off-site permanent impacts to 12 SF and temporary impacts to 784 SF of CDFW jurisdictional wetlands. As discussed above, all on-site freshwater marsh and coastal sage scrub would be preserved (See Table 3.3-2). The Project would also mitigate for the 12 SF of permanent impacts and 784 SF of temporary impacts to the off-site CDFW jurisdictional wetland habitat(s) to a level below significance.

Mitigation measure MM BIO-7 will mitigate permanent impacts to Waters of the U.S. on the Project site. Temporary impacts to off-site CDFW jurisdictional wetland habitat will be immediately addressed by recontouring to the natural grade and restoring as the appropriate type of wetland (MM BIO-8). Therefore, with implementation of these mitigation measures, the Project would not have a substantial adverse effect on federally protected Waters of the U.S. as defined by Section 404 of the CWA (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means. Impacts after mitigation would be less than significant.

TABLE 3.3-2. PROPOSED IMPACTS AND MITIGATION REQUIREMENTS

Habitat Type		Impact (acres)				Mitigation Ratio	Mitigation Acreage	Avoided
		On-site/	Off-site	Permanent	Temporary			
ACOE/CDFW Non-wetland Water of the US, Unvegetated ephemeral		0.08	0.0	0.08	0.0	1:1	0.08	0.0
CDFW Fresh/Saltwater Marsh		0.0	0.0183	0.0003 *	0.018 **	1:1	0.018	0.13
Diegan Coastal Sage Scrub		0.0	0.0	0.0	0.0	N/A	N/A	1.81
Agricultural/Greenhouse (graded/maintained)		12.18	0.0	12.18	0.0	N/A	N/A	4.32
Disturbed habitat (urban)		0.68	0.0	0.68	0.0	N/A	N/A	0.0
Developed (paved/developed area)		0.0	3.73	0.0	3.73	N/A	N/A	0.0
TOTAL		12.94	3.75	16.67	0.018	- -	0.08	6.26

Notes:

* Denotes 12 square feet of off-site permanent impacts to CDFW jurisdictional marsh

**Denotes 784 square feet of off-site temporary impacts to CDFW jurisdictional marsh

ACOE = U.S. Army Corps of Engineers

CDFW = California Dept. of Fish and Wildlife

NA/ - - = Not Applicable.

Source: BLUE Consulting Group, 2019 (Appendix D-1).

Impact 3.3-4: Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors or impede the use of native wildlife nursery sites.

All riparian habitat or other sensitive natural community, as well as the potential existing wildlife corridors and nursery sites have been avoided and preserved and pre-construction nesting surveys are required by MM BIO-1 and MM BIO-2. Therefore, the Project would not interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors or impede the use of native wildlife nursery sites. Impacts under this criterion would be less than significant.

Impact 3.3-5: Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.

The Project would impact 0.08 acres of Waters of the U.S. on site, 12 SF of permanent impacts and 784 SF of temporary impacts to off-site CDFW jurisdictional wetland habitats and mitigate to a level below significance after mitigation (MM BIO-7 and MM BIO-8). Mature trees are located within the southwest corner of the property that is being utilized for the Caltrans project but are not located within the Project site. Therefore, the Project would not conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance. Impacts under this criterion would be less than significant.

Impact 3.3-6: Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan.

With exception of minor wetland impacts described above, the project would not result in direct impacts on biological resources within the designated MHCP preserve. Therefore, the majority of MHCP conservation policies do not apply to the Proposed Project. With respect to MCHP wetland policies, project mitigation for the wetland impacts would comply with the MHCP's no net loss policy for wetland functions and values.

Although not adopted, the City's Draft Subarea Plan provides adjacency guidelines for development next to designated focused planning areas. These guidelines are intended to implement the MHCP's preserve management policies by ensuring minimal development impacts to biological resources within the MHCP's focused planning area (FPA). The adjacency guidelines were intended to be addressed during the planning stages of new development and include measures for addressing development effects related to drainage and toxics, erosion and sedimentation, lighting, noise, barriers, landscaping, and fire/brush management guidelines.

Project implementation would not conflict with FPA adjacency guidelines intended to minimize adverse effects of drainage, toxics, erosion, and sedimentation. The Project is required to comply

with local, state, and federal regulations pertaining to water quality. Section 402 of the Clean Water Act authorizes the State Water Resources Control Board to issue a National Pollutant Discharge Elimination System (NPDES) General Construction Storm Water Permit. NPDES regulations would require the Project to implement a stormwater pollution prevention plan (SWPPP) that specifies best management practices (BMPs) to prevent grading/construction-related pollutants (including sediment from erosion) from contacting stormwater and moving off-site into receiving waters, as well as elimination/reduction of non-stormwater discharges. In addition, inspections of all associated construction BMPs would be required. The Project would also be required to comply with provisions of the city's Grading, Erosion, and Sediment Control Ordinance, which includes engineering and construction standards to avoid degradation of the lagoon from erosion and sedimentation. Post-construction BMPs, as required by provisions the San Diego Regional MS4 Permit, would be implemented by the Project. These BMPs are described in Sections 2.3.7. and 3.7.4. of this EIR.

Lighting

A Photometric Study was conducted to analyze the effects of proposed outdoor lighting. The results of the study concluded that outdoor lighting levels would not be significant in surrounding sensitive habitat areas, including the Diegan coastal sage scrub area to the north and lagoon area to the south. The Photometric Study indicated that outdoor lighting would have no measurable foot-candle levels in these areas. In addition, streetlights proposed for the parking lot areas and perimeter pedestrian pathways would have full cutoff fixtures to minimize glare. For these reasons, the Project would not conflict with adjacency guidelines for lighting impacts.

Noise

As previously discussed, construction activity may result in significant edge effects related to noise. During the bird breeding season, these indirect effects may impact the breeding and nesting behaviors of sensitive bird species within the Diegan coastal sage scrub habitat areas to the north and lagoon areas to the south. Implementation of mitigation measures MM BIO-1 and MM BIO-2 which require preconstruction nesting surveys and provide for biological monitoring if active nests are identified, would reduce significant indirect effects on sensitive bird species to less than significant.

Barriers

The adjacency guidelines include provisions for the installation of barriers along the FPA boundaries to discourage human encroachment within the sensitive habitat areas. Implementation of MM BIO-6 would require the installation of temporary fencing for any construction activities adjacent to sensitive habitat areas. This construction fencing would be installed along the limits of disturbance for reconstruction of the storm drain outlets/culverts in the lagoon area. In addition, prior to construction of the on-site trail, construction fencing would be installed between the limits of disturbance and sensitive habitat areas. As part of the trail's construction, permanent fencing would

be installed along the trail and maintained in perpetuity. The above fencing requirements would be consistent with provisions of the adjacency guidelines for barriers.

Mitigation measure MM BIO-6 includes provisions to ensure consistency with landscape restrictions provided in the adjacency guidelines. These restrictions pertain to prohibiting the planting of non-native, invasive species within or adjacent to the FPA, directing irrigation away from the FPA, and implementation of a fertilization program that minimizes the use of fertilizers.

The adjacency guidelines also include provisions for brush management when wildfire hazards are identified for development. These guidelines are not applicable since the City's Fire Marshal would not require brush management for the Project.

Overall, with implementation of MM BIO-1 through MM BIO-6, the Project would be consistent with land use adjacency guidelines provided in the City's Draft Subarea Plan and the Project would not conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan. Impacts under the Impact 3.3-6 criterion would be less than significant.

3.3.5. Mitigation Measure(s)

The following mitigation measures would reduce impacts to below a level of significance.

MM BIO-1: Minimize and Mitigate Indirect Impact Avoidance/Minimization Measures

To avoid and/or minimize indirect impacts to off-site sensitive wetland and on- or off-site upland habitat and any associated sensitive species, the Project Applicant shall implement MM BIO-1 through MM BIO-6

MM BIO-1. Bird Nesting Survey for Proposed Trail

Construction activities for the proposed trail adjacent to Diegan coastal sage scrub should commence outside of the California gnatcatcher bird breeding season (February 15 to August 31). If construction occurs during the breeding season, then a bird nesting survey shall be conducted by a qualified biologist no more than 10 days prior to construction to determine whether breeding California gnatcatchers or active nests occur onsite or within 300 feet of the construction area boundary.

The wildlife agencies and the City's Development Services Department shall be notified if any breeding behavior or active nests are detected. If breeding activity or an active nest is identified, the biologist and Project Applicant shall postpone construction activity and contact the wildlife agencies to discuss: 1) the best approach to avoid/minimize impacts to breeding/nesting birds (e.g., sound walls), and 2) a monitoring program acceptable to the wildlife agencies. Subsequent to these

discussions, work may be initiated subject to implementation of the agreed-upon avoidance/minimization approach and monitoring program.

If the biologist determines that bird breeding activity is being disrupted, the Project Applicant shall stop work and coordinate with the wildlife agencies to review the avoidance/minimization approach. Upon agreement as to the necessary revisions to the avoidance/minimization approach, work may resume subject to the revisions and continued monitoring. Success or failure of an active nest shall be established by regular and frequent trips to the site, as determined by the biologist and through a schedule approved by the wildlife agencies. Monitoring of an active nest shall continue until fledglings have dispersed or the nest has been determined to be a failure, as approved by the wildlife agencies.

MM BIO-2. Bird Nesting Survey for Off-Site Culverts

Construction activities for the four storm drain culverts/outlets should commence outside of the breeding season for the Belding's Savannah Sparrow and the Ridgway's Rail (March 15 to September 15). If construction occurs during the bird nesting season, then a Pre-construction nesting survey shall be conducted by a qualified biologist no more than 10 days prior to the first day of construction to determine whether breeding activity or active nests of the Belding's Savannah Sparrow and the Ridgway's Rail occur within 300 feet of the construction area boundary. If construction is to take place anytime within the breeding season for these species, then the above bird clearance surveys and associated monitoring shall be conducted by a qualified biologist on each day of construction activity.

The wildlife agencies and the City's Development Services Department shall be notified if any breeding behavior or active nests are detected during the surveys for the Belding's Savannah Sparrow and the Ridgway's Rail. If breeding activity or an active nest is identified, the biologist and Project Applicant shall postpone construction activity and contact the wildlife agencies to discuss: 1) the best approach to avoid/minimize impacts to breeding/nesting birds (e.g., sound walls), and 2) a monitoring program acceptable to the wildlife agencies. Subsequent to these discussions, work may be initiated subject to implementation of the agreed-upon avoidance/minimization approach and monitoring program. If the biologist determines that bird breeding activity is being disrupted, the Project Applicant shall stop work and coordinate with the wildlife agencies to review the avoidance/minimization approach. Upon agreement as to the necessary revisions to the avoidance/minimization approach, work may resume subject to the revisions and continued monitoring. Success or failure of an active nest shall be established by regular and frequent trips to the site, as determined by the biologist and through a schedule approved by the wildlife agencies. Monitoring of an active nest shall

continue until fledglings have dispersed or the nest has been determined to be a failure, as approved by the wildlife agencies.

Reporting. Prior to final engineering inspection for the off-site storm drain outlets and on-site trail, the Project Applicant shall submit a final bird survey monitoring report prepared by the project biologist to the wildlife agencies and City's Development Services Department. The report shall include documentation of all bird survey, monitoring activities, coordination efforts with the wildlife agencies, as-built construction drawings with an overlay of any active nests in the survey areas, photographs of habitat areas during pre-construction and post-construction conditions, and other relevant summary information documenting that authorized impacts were not exceeded and that general compliance was achieved for the avoidance/minimization provisions and the biological monitoring program required by the wildlife agencies.

MM BIO-3. Conduct Biological Monitoring and Reporting.

Prior to grading permit issuance, the Project Applicant shall provide evidence to the Development Services Department that a qualified biologist has been retained to monitor construction activity; verify that construction limits are respected; and that the Project's other biological mitigation requirements and permit terms and conditions are being properly implemented.

Monitoring activities shall be thoroughly and accurately documented on a daily basis. The biologist shall prepare daily, weekly, monthly, annual, and final monitoring reports for the City of Encinitas. Prior to the start of monitoring activities, Project Applicant shall provide proposed monitoring report formats, describing content, organization and submittal schedule for City's Development Services Department review and approval in consultation with wildlife agencies.

MM-BIO-4. Development Lighting

The Project Applicant shall ensure that development lighting shall always be directed away from and/or shielded so as not to illuminate sensitive habitat areas.

MM-BIO-5. Open Space Easement.

Prior to grading permit issuance, an open space easement shall be recorded over lots "B" and "C" shown on the approved tentative map.

MM-BIO-6. Design Impact Avoidance/Minimization

Prior to final landscape plan approval, landscape plans shall specify the following:

1. All Project site landscaping shall comply with the City's Invasive Plant Policy.
2. For landscaping proposed adjacent to sensitive habitat areas, the use of non-native, invasive plant species (i.e., container stock and hydroseed material) shall be prohibited. Irrigation, fertilization, pest control, and pruning practices shall be controlled and monitored in these landscaped areas to avoid alteration of habitat conditions and prevent shifts in species composition from native to non-native flora.

Prior to issuance of construction permits, the following measures shall be included in construction plans to the satisfaction of the Development Services Department:

- 3 All contractors shall abide by the requirements of the biological mitigation measures contained in the Project's EIR, entitlement permit conditions of approval, state and federal wetland permit conditions of approval, and the directions in the field of the project biologist.
4. Off-site wetland areas and on-site/off-site sensitive upland habitat areas shall be protected with construction fencing. The construction fencing shall be portrayed on the construction plans to the satisfaction of the Development Services Department. In each work area, fencing will be installed in advance of mobilization and will remain in place until construction in that area is complete and the contractor has demobilized. For sensitive upland habitat, construction fencing shall remain until permanent fencing is installed along the proposed on-site trail. All fencing shall be installed under the direct supervision of a qualified wildlife biologist.
5. All outdoor lighting on the project site shall be shielded with full-cutoff light fixtures and directed away from the adjacent sensitive habitat areas. If night work is necessary, night lighting shall be of the lowest illumination necessary for human safety, selectively placed, shielded with full-cutoff fixtures, and directed away from sensitive habitat.
6. All construction activity adjacent to wetland and Diegan coastal sage scrub habitat areas shall be required to adhere to measures outlined in the City's Grading, Erosion, and Sediment Control Ordinance to avoid degradation to wetland habitat from erosion. These measures include restrictions on the timing and amount of grading. For example, grading shall be prohibited during the rainy season (October 1st through April 15th) without an approved erosion control plan and program in place. Grading or vegetation removal shall be prohibited adjacent to wetland areas during the rainy season unless determined to be allowable on a site-specific basis with the

provision of all necessary erosion control devices, which must be in place and maintained throughout the grading period.

7. Erosion and sediment control measures used for the proposed Project, including fiber rolls and bonded fiber matrix, shall be made from biodegradable materials such as jute, with no plastic mesh, to avoid creating a wildlife entanglement hazard. If wattles are used, only certified sterile, weed-free rice straw will be permitted.
8. All hazardous materials used in project construction shall be transported, stored, handled, and used in strict accordance with label restrictions and all applicable federal, state, and local regulations. In the event known or suspected hazardous materials are encountered or released during site preparation, grading, or other Project related activity, work in the vicinity of the find shall be suspended until a qualified contractor (meeting the Environmental Professional qualifications in ASTM E1527-13) is retained by the Project Applicant and can assess the nature of the find and stipulate appropriate follow-up and protective measures.
9. All contractors shall strictly limit their activities, vehicles, equipment, and construction materials to the fenced Project footprint. No construction staging shall occur with sensitive habitat or open space easement areas.
10. To avoid attracting predators, the Project site shall be kept as clean of debris as possible. All food related trash items shall be disposed of on a daily basis and shall be enclosed in sealed containers and regularly removed from the site.
11. Pets of project personnel shall not be allowed on the Project site.

Timing/Implementation:

Prior to grading permit and/or construction permit issuance; during grading, excavation and construction activities, upon completion of monitoring activities, and prior to final engineering inspection.

Enforcement/Monitoring:

City of Encinitas Development Services Department

Level of Significance After Mitigation

Implementation of mitigation measures **MM BIO-1 through MM BIO-6** would reduce impacts to below a level of significance.

MM BIO-7. Wetland Mitigation Credit

Prior to grading permit issuance, the Project Applicant shall mitigate the loss of 0.08 acre of Waters of the U.S. at a 1:1 mitigation ratio to the satisfaction of the wetland permitting agencies. A wetland mitigation credit of at least 0.08 acre shall be purchased from a resource agency-approved wetland mitigation bank within the planning area of the Multiple Habitat Conservation Program. The mitigation bank and the Project Applicant shall provide a receipt to the City's Development Services Department demonstrating the purchase of the required credits in favor of the Proposed Project from the approved mitigation bank prior to grading permit issuance.

Timing/Implementation: *Prior to grading permit issuance.*

Enforcement/Monitoring: *City of Encinitas Development Services
Department*

Level of Significance After Mitigation

Implementation of mitigation measure **MM BIO-2** would reduce permanent impacts to on-site Waters of the U.S. to below a level of significance.

MM BIO-8.: Wetland Revegetation Plan

Prior to grading permit issuance, a wetland revegetation plan shall be prepared and approved by the City and wetland permitting agencies having jurisdiction over the temporary off-site impacts (784 SF) to wetlands. The revegetation plan will include, but not be limited to, an implementation plan; erosion control measures, appropriate seed mixtures and planting methods; quantitative and qualitative success criteria; a maintenance, monitoring, and reporting program; an estimated completion time; and contingency measures. Provisions of the revegetation plan shall be referenced on the Project's grading plan to the satisfaction of the City's Development Services Department.

Timing/Implementation: *Prior to grading permit issuance, and during
construction activities.*

Enforcement/Monitoring: *City of Encinitas Development Services
Department*

Level of Significance After Mitigation

Implementation of mitigation measure **MM BIO-3** would reduce temporary impacts off-site wetlands to below a level of significance.

MM BIO-9.: Obtain Approval of All Necessary Resource Agency Permits

Prior to grading permit issuance, the applicant shall obtain all necessary resource agency permits and provide copies to the City. All conditions identified within each of the resource agency permits shall be implemented in accordance with the permit and referenced on project grading plans to the satisfaction of the Development Services Department. The applicable resource agency permits for the proposed project include a Clean Water Act Section 404 Permit from the U.S. Army Corps of Engineers (Nationwide 18-Minor Discharges), a Clean Water Act Section 401 Water Quality Certification from the Regional Water Quality Control Board, and a Section 1602 Streambed Alteration Agreement from the California Department of Fish and Wildlife.

Timing/Implementation: *Prior to grading permit issuance, and during construction activities.*

Enforcement/Monitoring: *City of Encinitas Development Services Department*

Level of Significance After Mitigation

Implementation of mitigation measure **MM BIO-4** would reduce impacts to below a level of significance.

3.3.6. Cumulative Impact Analysis

In conjunction with other development projects in the project vicinity (Table 2-5), the proposed Project would not have a cumulative considerable impact on biological resources. As discussed above, with implementation of mitigation measures, the Project would be consistent with applicable policies of the regional MHCP. In addition, the project would not impact any upland habitat (Figure 3.3-3). Permanent impacts to the 0.08 acres of jurisdictional unvegetated, non-wetland, ephemeral waters (on-site) and 12 SF of jurisdictional CDFW wetlands (off-site) would be fully mitigated and no-net-loss of wetlands would occur. All 784 SF of temporary impacts to the jurisdictional CDFW wetlands would be mitigated with the restoration of the impacted areas. The applicant proposes to convey 0.13 acre of on-site freshwater marsh and 1.81 acres of on-site Diegan coastal sage scrub to the Nature Collective, a non-profit organization that conserves and manages sensitive habitat and other biological resources within the San Elijo Lagoon. This donated land would be managed by the Nature Collective in perpetuity. Lastly, during construction activity, significant indirect effects on sensitive species would be avoided with implementation of **MM BIO-1** through **MM BIO-6**. For above reasons, the Project's impacts on biological resources would not be cumulatively considerable.



SOURCE: BLUE Consulting Group, 2019



Existing Vegetation and Habitats
Belmont Village Encinitas-by-the-Sea
Figure 3.3-1a



SOURCE: RECON Environmental, Inc., 2019



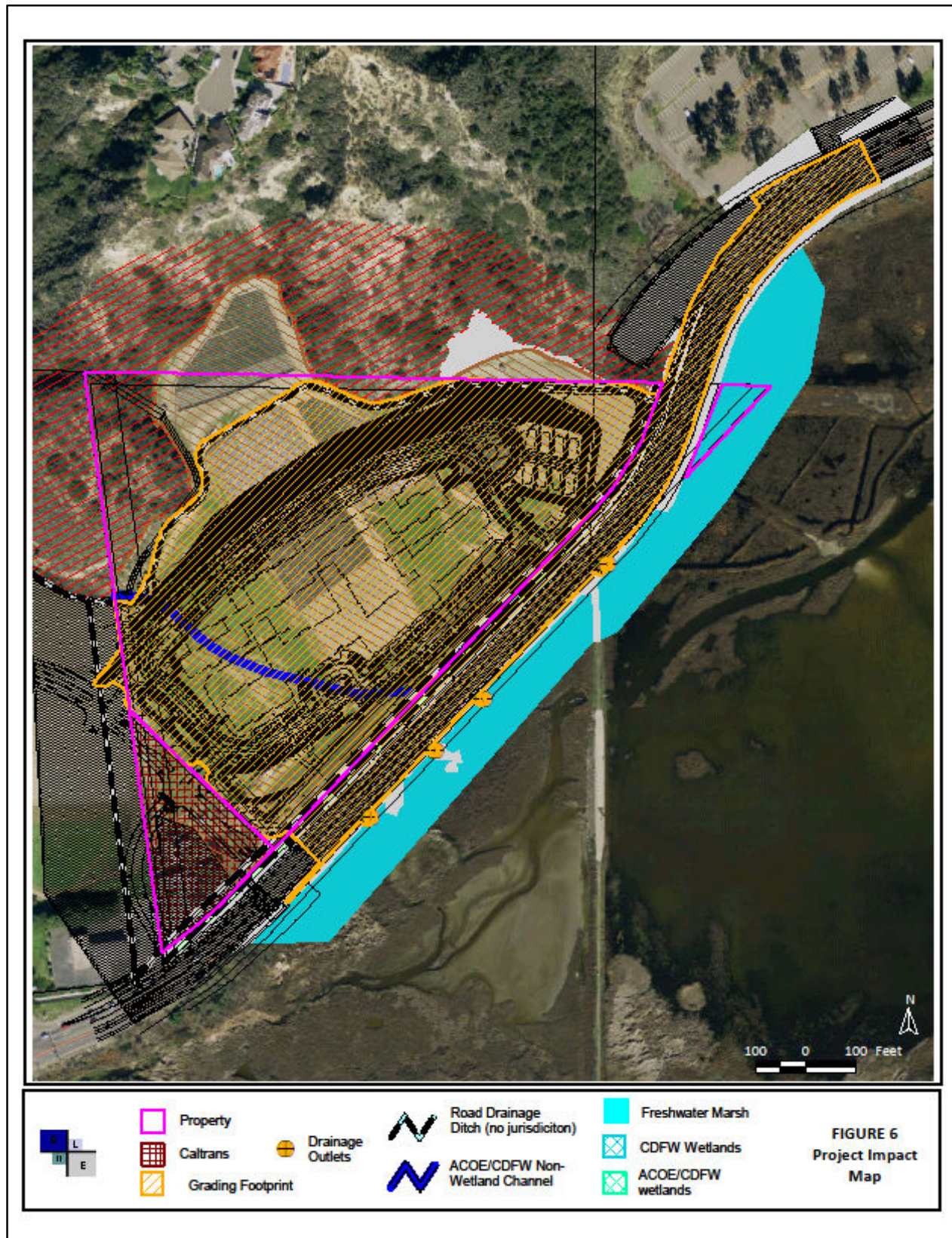
Existing Vegetation and Habitats – Off-Site
Belmont Village Encinitas-by-the-Sea
Figure 3.3-1b



SOURCE: BLUE Consulting Group, 2019



Jurisdictional Delineation
Belmont Village Encinitas-by-the-Sea
Figure 3.3-2



SOURCE: BLUE Consulting Group, 2019



Proposed Biological Resource Impacts
Belmont Village Encinitas-by-the-Sea
Figure 3.3-3